tling international disputes, it is particularly appropriate that the opportunity should have been offered it to establish such a precedent. It should go further than any other nation in yielding to any well-founded request that a dispute should be arbitrated. It would be unworthy of the United States to rely upon what must be deemed a technical reason for declining to arbitrate, and it is to be hoped that the State Department will not persist in the attitude which has been assumed, and will embrace the opportunity of creating a precedent sustaining the proposition that it is not necessary in international law that injury actually be suffered before a justiciable action arises.

The CHAIRMAN. Professor Westlake, who died on the 17th of April, and who was the mentor of the British Government in many of these affairs, sent, before he died, to the Secretary a letter upon this particular matter, which I will ask the Secretary to read:

Secretary SCOTT. Before reading the letter I should like to say that I asked this year a number of foreign publicists to be present and participate in the discussion, among others, naturally, Professor Westlake. In a personal letter, he regretted that his advanced age and precarious state of health would not permit him to come, but he took a great interest in the program, which was enclosed in the letter that I sent to him, especially in Question 7, and promised a brief memorandum. A few days after his letter of declination, I received the memorandum, which I now have the honor to read.

Under date of March 14, 1913, the distinguished publicist said:

> Dear Professor Scott:
>
> I now sit down to send you those observations on the "proposed subjects for discussion" at the forthcoming meeting of the American Society of International Law, which I promised you in my last.
>
> The whole series of those subjects is full of the canal, which indeed has now an overmastering interest for all who are concerned about the rectitude of international conduct and the promotion of international arbitration. The most admirable speech of Mr. Elihu Root in the Senate, which he was so kind as to send me, enables me to feel assured that under his guidance the discussions in the Association will be thorough and sound. It is therefore only as to No. 7 in the list, which steps a little out from the line of the others, that I wish to say a few words.

The question—"Is it necessary in international law that injury be actually suffered before a justiciable action arises?"—seems equivalent to asking whether, in the present condition of international law, there are any means of bringing political claims to a quasi-judicial decision. Where there is an injury there is a legal claim, and arbitration is possible, but how about non-legal claims, that is political ones?

I hope that in discussing that question the Association will not lose sight of the fact that in the Convention for the Pacific Settlement of International Disputes, Art. 17 in the form of 1899, preserved unaltered as Art. 39 of 1907, runs thus (the italics mine):

> The submission to arbitration (*convention d'arbitrage*) is concluded for questions already existing, *or for questions which may arise eventually. It may embrace any dispute*, or only disputes of a certain category.

Here is a provision which distinctly allows giving a justiciable character to at least *some* political questions, as will be seen by considering the present state of the coastwise question between Great Britain and the United States.

Great Britain, supposing her claim to be justified, will still have suffered no *injury* until and unless the coastwise exemption is applied in the working of the canal. In the meantime there is only an intention on the part of the United States, expressed in very solemn form by the Panama Canal law, but liable to be altered. But that intention may have a great effect on shipbuilding, and on the various other commercial and financial arrangements necessary in contemplation of the traffic through the canal. It is therefore important that the question should be decided as soon as may be, and the article which I have quoted from the Hague Convention admits it as a subject of arbitration, political rather than legal as it so far is, in the character of "a question which may arise eventually."

If the Association should go more at large into the *justiciableness* of political claims, it may perhaps find it necessary to consider the *justiciableness* of political claims. On that topic, which lies at the root of practical international relations, I cannot add to what I have said in Chapter XIII of my volume on *International Law, Part I, Peace,* 1904 and 1910. The title of the chapter is *The Political Action of States.*

Believe me to be yours ever sincerely,

(Signed) J. WESTLAKE.

Secretary SCOTT. I may be permitted, Mr. Chairman and gentlemen, merely to say, in conclusion, that the writer of this letter, who has since died, was one of the very few honorary members of the AMERICAN SOCIETY OF INTERNATIONAL LAW.

The CHAIRMAN. The question "What is the international obligation of the United States, if any, under its treaties, in view of the British contention?" is the next.

It will be presented first by Mr. Hannis Taylor, of the Bar of the Supreme Court of the United States, formerly Minister to Spain.

Mr. TAYLOR. Mr. Chairman, Ladies and Gentlemen: I have just heard with profound regret of the death of Professor Westlake, with whom I had for some years very pleasant relations. Not very long ago he was good enough to send me the last edition of his great work on International Law, which I have always near me. Next to Thomas Erskine Holland, I regard him as the clearest and most authoritative writer upon international law Great Britain has produced since the death of Hall.

## THE RULE OF TREATY CONSTRUCTION KNOWN AS *REBUS SIC STANTIBUS*.

ADDRESS OF HONORABLE HANNIS TAYLOR, *of the Bar of the Supreme Court of the United States, formerly American Minister to Spain.*

At the end of a century of peace between Great Britain and the United States we have a pending problem, whose solution is to test the strength of the so-called moral alliance now existing between the two grand divisions of English-speaking peoples. That moral alliance made a tremendous advance after Lord Salisbury was wise enough to accept, in 1895, our supreme arbitrating power in the New World as asserted by President Cleveland and Mr. Olney in the Venezuelan boundary controversy. Great Britain simply enlarged that policy of conciliation when in 1901 she practically abrogated the Clayton-Bulwer Treaty with the avowed purpose of advancing the construction of a ship canal "by whatever route may be considered expedient." Great Britain really had nothing to give up in abrogating that treaty which, as a whole, rested upon the assumption that Europe was to have an